

DEFENDANTS' MOTION TO DISMISS
TABLE OF CONTENTS

**[Pursuant to the Individual Rules of the
Honorable Alvin K. Hellerstein, Rule 2(B)]**

1. Notice of Motion to Dismiss
2. Affirmation of Roger H. Briton in Support of Motion to Dismiss
3. Exhibits
 - Exhibit A: Plaintiff's April 2002 charge of race discrimination
 - Exhibit B: Plaintiff's January 2003 charge of race discrimination and retaliation
 - Exhibit C: New York State Division of Human Rights May 27, 2005 Determination and Order after Investigation in Case No. 4606500
 - Exhibit D: New York State Division of Human Rights May 27, 2005 Determination and Order after Investigation in Case No. 2308637
 - Exhibit E: Notice of Petition, Verified Petition and Exhibits in DeWitt v. New York State Division of Human Rights, et al., Index No. 402520/05
 - Exhibit F: March 15, 2006 New York State Court Decision/Order dismissing Plaintiff's Petition for Review
 - Exhibit G: September 2005 EEOC Dismissal and Notice of Rights
 - Exhibit H: Plaintiff's April 4, 2006 Amended Complaint
4. Affirmation of Michael J. Ross in Support of Motion to Dismiss
5. Defendant's Memorandum of Law in Support of Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANTS
58 South Service Road, Suite 410
Melville, New York 11747
(631) 247-0404

ATTORNEYS OF RECORD:
ROGER H. BRITON, ESQ. (RB4705)

-----X
OLIVE B. DEWITT,

Plaintiff,

-against-

ONE BEACON INSURANCE CO.,
MICHAEL J. ROSS AND ROBERT J.
SAMBRATO,

Defendants.

Civil Action No.: 05 CV 10483

**DEFENDANTS' NOTICE
OF MOTION TO DISMISS**

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Roger H. Briton, sworn to on April 18, 2006, and the exhibits annexed thereto; the Affirmation of Michael J. Ross, sworn to on March 21, 2006; and, the Memorandum of Law in support of Defendants' Motion to Dismiss, and all the pleadings and proceedings heretofore had herein, the undersigned will move this Court, before the Alvin K. Hellerstein, United States District Judge, in Courtroom 1050, of the United States District Courthouse, 500 Pearl Street, New York, New York 10007-1312, on May 31, 2006 for an order dismissing with prejudice the Complaint herein against Defendants pursuant to Fed. R. Civ. P. 12(b)(1) and (6) and for such other and further relief as the Court may deem just and proper.

Dated: Melville, New York
April 18, 2006

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANTS
58 South Service Road, Suite 410
Melville, New York 11747
(631) 247-0404

By:

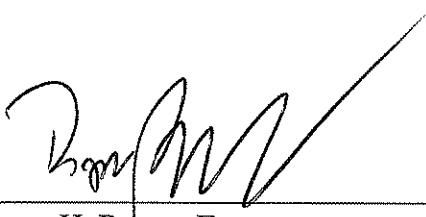

Roger H. Britton

I:\Clients\O\57254\58536\Pleadings\NM TO DISMISS.doc

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2006, I caused a true and correct copy of the enclosed Notice of Motion to Dismiss the Complaint, Supporting Affirmations with Exhibits to be served upon Plaintiff, via First-Class Mail by depositing said copy into an official depository under the exclusive care and custody of the United States Postal Service addressed to:

Olive B. DeWitt
Plaintiff, Pro Se
3440 Mickle Avenue
Bronx, New York 10469-1606



Roger H. Britton, Esq.

I:\Clients\O\57254\58536\Pleadings\NM TO DISMISS.doc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACKSON LEWIS LLP
ATTORNEYS FOR DEFENDANTS
58 South Service Road, Suite 410
Melville, New York 11747
(631) 247-0404

ATTORNEYS OF RECORD:
ROGER H. BRITON, ESQ. (RB4705)

-----X
OLIVE B. DEWITT,
Plaintiff,
-against-
ONE BEACON INSURANCE CO.,
MICHAEL J. ROSS AND ROBERT J.
SAMBRATO,
Defendants.
-----X

Civ. No.: 05 CV 10483

**AFFIRMATION OF ROGER
H. BRITON IN SUPPORT OF
MOTION TO DISMISS**

I, ROGER H. BRITON, an attorney admitted to practice law before the Courts of the State of New York and, inter alia, before the United States District Court for the Southern District of New York, hereby affirms, under penalty of perjury, as follows:

1. I am a member of the law firm Jackson Lewis LLP, counsel for Defendants OneBeacon Insurance Company (“OBI”), Michael J. Ross and Robert J. Sambrato.

2. The following statements are true based upon my own knowledge, review of pertinent documents, and information and belief.

3. Attached hereto as Exhibit A is Plaintiff’s April 2002 charge of race discrimination against Michael J. Ross, Esq. and Robert J. Sambrato, Esq. (“R&S”) filed with the New York State Division of Human Rights (“Division”), Division Case No. 4606500 (“First

Charge"). The First Charge was cross-filed with The Equal Employment Opportunity Commission ("EEOC") as EEOC Charge No. 16GA20251.

4. Attached as Exhibit B is Plaintiff's January 2003 charge of race discrimination and retaliation against R&S and OBI filed with the Division, Division Case No. 2308637 ("Second Charge"). The Second Charge was cross-filed with the EEOC as EEOC Charge No. 16GA300242 ("Second EEOC Charge").

5. Attached as Exhibits C and D are the Division's virtually identical May 27, 2005 Determinations and Orders After Investigation, finding no probable cause to believe that Plaintiff had been subjected to race discrimination or retaliation, dismissing both the First Charge and Second Charge. Note that Exhibit C, which dismissed the First Charge referenced a lack of evidence to support Plaintiff's "companion case with the Division (DHR Case No. 2308637)" and that Exhibit D, which discussed the Second Charge made a parallel reference with regard to the Plaintiff's First Charge.

6. On or about July 27, 2005, Plaintiff filed a Petition with the Supreme Court of the State of New York, County of New York, ("NYS Supreme Court") pursuant to Article 78 of the CPLR "seeking review and removal of the proceedings and the determination of the New York State Division of Human Rights which dismissed petitioner's complaint charging discriminatory practices and conduct in employment against respondent One Beacon Insurance Company; Michael J. Ross, Esq. and Robert J. Sambrato, Esq., on March 27, 2005...." DeWitt v. New York State Division of Human Rights, One Beacon Insurance Company, Michael J. Ross, Esq. and Robert J. Sambrato, Esq., Index No. 402520/05. A copy of the Notice of Petition, Plaintiff's Verified Petition and Exhibits thereto are attached as Exhibit E hereto.

7. By Decision/Order dated March 15, 2006, the NYS Supreme Court "ordered that the Petition is denied and the proceeding is dismissed". A copy of the Decision/Order, entered on March 22, 2006 is attached as Exhibit F.

8. On or about August 30, 2005 and September 2, 2005, the EEOC issued a Dismissal and Notice of Rights on the First and Second Charges respectively "adopting the findings of the state or local fair employment practices agency that investigated this charge." Copies of each of the September 2 Notice is attached as Exhibit G. We have not located the August 30, 2005 Notice (nor has it been attached to Plaintiff's Pleadings) but have been advised by the EEOC of its issuance. Although we have requested a duplicate from the EEOC, it has not yet been received.

9. Initially, Plaintiff filed a Complaint, and Summons issued on December 13, 2005 in the present matter. Plaintiff filed and served an Amended Complaint in February 2006, and, thereafter, a further Amended Complaint dated April 4, 2006 ("AC"). A copy of the April 4, 2006 Amended Complaint (without exhibits other than Exhibit A, the 9/2/05 Right to Sue Letter) is attached as Exhibit H. To our knowledge, the additional Defendants identified in the AC have not as yet been served and the undersigned does not, as yet, appear on any of their behalf.

WHEREFORE, the undersigned respectfully requests that the Court grant Defendants' Motion to Dismiss and also grant such other and further relief as this Court may deem just and proper.

Dated: New York, New York
April 18, 2006



ROGER H. BRITON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
OLIVE B. DEWITT,

Plaintiff,

-against-

ONE BEACON INSURANCE CO.,
MICHAEL J. ROSS AND ROBERT J.
SAMBRATO,

Defendants.

Civ. No.: 05 CV 10483

**AFFIRMATION OF
MICHAEL J. ROSS IN
SUPPORT OF MOTION TO
DISMISS**

I, MICHAEL J. ROSS, an attorney admitted to practice law before the Courts of the State of New York and, inter alia, before the United States District Court for the Southern District of New York, hereby affirm, under penalty of perjury, as follows:

1. I am an individual Defendant herein and am fully familiar with the facts and circumstances set forth herein.

2. At all times relevant to this action, Plaintiff was employed by OneBeacon Insurance Company (“OBI”) as the Office Supervisor at a law firm, “Michael J. Ross, Esq. and Robert J. Sambrato, Esq.” (“R&S”), a unit of OBI. Plaintiff was paid by OBI, was provided employee benefits by OBI, was subject to supervision by OBI management, and was subject to terms and conditions of employment established by OBI. By contrast, R&S, as a unit within OBI, was not Plaintiff’s employer: it did not pay her salary, provide any benefits, or establish any terms and conditions of employment.

3. At all times relevant to this matter, I was an employee of OBI and held the position of Managing Attorney of R&S.

4. At all times relevant to this matter, Robert J. Sambrato was an employee of OBI and held the position of Assistant Managing Attorney of R&S.

WHEREFORE, the undersigned respectfully requests that the Court grant Defendants' Motion to Dismiss and grant said Defendants such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 21, 2006



MICHAEL J. ROSS

I:\Clients\O\57254\58536\Pleadings\Ross AFF-support Mot Dismiss.doc